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[APPELLATE CRIMINAL JURISDICTION]
HUGGARD, C.J.
November 9, 1934.

BAPOO v. REX.

[SINGAPORE CRIMINAL APPEAL No. 39 of 1934]

Criminal procedure—charge of kidnapping—evidence indicating an offence triable only by Supreme Court — jurisdiction — Criminal Procedure Code, S. 183 (2).

The accused was charged before the Criminal District Court with kidnapping, an offence punishable under Section 363 of the Penal Code and convicted. In fact the evidence would have supported a charge of kidnapping a woman to compel her marriage under section 366 of the Penal Code, an offence cognizable only by the Supreme Court. The accused appealed against the conviction on the ground that the District Court had no jurisdiction to try the accused since the evidence disclosed an offence cognizable only by the Supreme Court.

Held, that the District Judge, having properly exercised his discretion under section 183 (2) of the Criminal Procedure Code, was entitled to dispose of the case summarily and the Appellate Court would refuse to set the proceedings aside.

Magistrates Appeal against the order of Mr. H. A. Forrer, District Judge, convicting the appellant and two others of kidnapping a woman named Jane Bellapoo from the Colony on or about the 19th of January, 1934, an offence punishable under section 363 of the Penal Code and of wrongfully confining her on the 16th January, 1934.

Among other grounds of appeal which are set out in the judgment below, the appellant contended that the proceedings before the District Judge were illegal in that the District Court had no jurisdiction to try and convict the accused of a minor offence when the evidence for the prosecution indicated an offence cognizable solely by the Supreme Court.

De Mello, for the Appellant. If evidence justifies charge under, say, Section 366, an accused cannot properly be charged with and convicted of a lesser charge. *Man & anor* v. *Samsah*, 3 Kyshe 99; *Low Ah You* v. *Tan Ah Leong*, 4 S.L.J. 39; *R.* v. *Ramtohal Singh*, 5 Suther. W. R. 12; *R.* v. *Heeramun Singh*, 8 Suther. W.R. 30; *In Re Madurai*, I.L.R. 12 Mad. 54. See Section 183 (2) of the local Criminal Procedure Code. There is no doubt as to intent with which the girl was taken away. See *Queen Empress* v. *Abdul Karim & anor.*, I.L.R. 18 Cal. 18. *Sohoni*, page 526 Note 7. He submitted (1) that the charges did not accord with evidence which indicated a much more serious offence (2) that real conviction as appeared from the Judgment was not in accord with formal judgment and (3) that, whether one looked at the charge on evidence or conviction, the case was one which should have been committed to the Assizes. The accused should have been charged separately. *Chatoo Raj* v. *Queen Empress*, I.L.R. 27 Cal. 1042.

Adrian Clark, Deputy Public Prosecutor, for the Crown. Original information was laid only under Section 363 of Penal Code. The real point is the construction of Section 183 of the Criminal Procedure Code. The District Judge was fully entitled to deal with the case under Section 183. There are cases in which the District Court has no jurisdiction, e.g. Section 11 (2) of the Criminal Procedure Code. But if he has jurisdiction he can deal with it though the evidence point to a most serious offence having been committed. The first part of the case of *R.* v. *Ramtohal Singh* supports my contention. In *Heeramun Singh's* case (*supra*) the accused was charged with a serious offence. In *Man's case* (*supra*) the Judge had doubts but followed *Ramtohal's* case. In *Low Ah You's* case no question of jurisdiction arose. That was a case of altering one charge to two. In *Secunder* v. *Kyamboo*, 3 Kyshe 1161, there was no evidence to support the lesser offence. In *Queen Empress* v. *Abdul Karim* (*supra*) the more serious charge was laid. In *re Madurai* (*supra*) the complaint disclosed the more serious offence. He cited *Queen* v. *Teo Ah Soon*, 2 S.S.L.R. 82; *Queen Empress* v. *Ranjaman*, 22 Mad. 459; *King Emperor* v. *Ayyan*, 24 Mad. 675 & 677; *King Emperor* v. *Ishtiag Ahmad*, 27 All 69; and the English cases of *In re Thompson*, 30 L.J. Mat. Cas. 19; and *Wilkinson* v. *Dultan*, 32 L.J. Mag. C. 152. Any Court has jurisdiction. No injustice is done here as accused would be liable to be tried again. In any event the conviction under section 342 of the Penal Code is correct and it has not been questioned. If the Court holds against me as far as the charge under Section 363 is concerned the Appellant should be sent back. He should not be acquitted as he has never been tried at all. It is a case for *venire de novo*. *R.* v. *Baker*, 7 Cr. A.R. 217; *R.* v. *Ingleson*, 11 Cr. A.R. 21; *R.* v. *Goldstein*, 11 Cr. A.R. 29; *R.* v. *Hussey*, 18 Cr. A.R. 121; *Crane* v. *Director of Public Prosecutions*, 15 Cr. A.R. 183 at pages 207—8 and 216—7. See also *Man* v. *Samsah* (*supra*). The whole question is whether a proper charge has been laid.

De Mello in reply.

The appeal was heard before the Chief Justice Sir Walter Clarence Huggard, Mr. Justice Prichard and Mr. Justice Terrell and dismissed on the 23rd October, 1934.

At the conclusion of the argument the learned Judges intimated that they would give their grounds of decision. The following written judgment of the Court was delivered by the Chief Justice.

HUGGARD, C.J.—This appeal came before us on the 23rd October. At the conclusion of the argument we dismissed the appeal but stated that we would give our reasons at a later date. This we now proceed to do.

The Appellant was charged with two other persons before the District Court, Singapore, on the 2nd July, 1934, with the following offences:—

(1) Kidnapping a woman named Jane Bellapoo from the Colony on or about the 19th day of January, 1934 — an offence punishable under section 363 of the Penal Code;

(2) Wrongfully confining the said Jane Bellapoo on the 16th day of January, 1934.

All three Accused were tried and convicted on both charges and were sentenced to varying terms of imprisonment, the sentences upon the Appellant being two years rigorous imprisonment in respect of the first charge and six months rigorous imprisonment in respect of the second charge, the sentences to run consecutively.

From these convictions and sentences the Appellant alone appealed on the following grounds:—

(i) That the evidence for the prosecution being throughout directed essentially to proving an offence under section 366 of the Penal Code, cognizable solely by the Supreme Court, the trial had before a Court of inferior jurisdiction was wholly illegal.

(ii) Alternatively, that the evidence adduced for the prosecution was equivocal in effect; and the learned District Judge was, therefore, wrong in inferring therefrom that the said Jane Bellapoo (who is between 17 and 21 years of age) had been wrongfully confined or kidnapped, when he could and should, upon a true view of such evidence, have held that she left the house of her employer, Wickaramanayake, on the 16th day of January, 1934, and remained away therefrom for over three months, to gratify her own desires.

(iii) That, as the two charges aforesaid were founded on distinct and separate sets of facts, not forming part of one transaction, the arraignment of the Appellant upon them both, at one and the same time, and simultaneously with the other two accused, was contrary to law, and prejudiced his fair trial.

(iv) That the learned District Judge was wrong in admitting at the said trial evidence relative to acts alleged to have been done, or events alleged to have occurred, beyond the limits of this Colony (to wit, in the State of Johore) and thereby, in effect, endowing himself with jurisdiction over an alleged offence which he does not by law possess.

(v) That, in any case, the sentences are excessive their severity not being justified by the evidence.

At the hearing of the appeal Counsel for the Appellant abandoned the fourth ground of appeal, and it is therefore unnecessary to refer further to it.

The first ground of appeal relates only to the conviction on the first charge, namely, kidnapping from the Colony, and for the purposes of considering that ground of appeal it is necessary to refer briefly to the facts of the case.

The Accused was charged under section 363 of the Penal Code with kidnapping the girl in question from the Colony, and evidence was given at the trial in support of that charge. But the evidence went further and showed that after the girl had been kidnapped efforts were made, apparently with success, to compel her to marry against her will. In these circumstances Counsel for the Appellant contended that as the evidence pointed to the commission of an offence under section 366 of the Code—an offence cognizable only by the Supreme Court—the District Judge had no jurisdiction to try the Appellant on the less serious charge and that the trial was wholly illegal.

Stated in the form of a general proposition his contention amounted to this: that where in any case the evidence discloses or suggests the commission of a more serious offence than that with which the accused person stands charged, he must be tried for that more serious offence, and the Court cannot properly proceed with the trial on the less serious charge which has been laid.

In support of his contention on this point Counsel for the Appellant referred us to the following cases:—

†*Man & another* v. *Samsah*, 5 Kyshe, 99.

†*Low Ah You* v. *Tan Ah Leong*, 4 Straits Law Journal, 39.

Regina v. *Ramtohul Singh*, 5 Sutherland Weekly Reporter, 12.

Regina v. *Heeramun Singh*, 5 Sutherland Weekly Reporter, 30.

In re Madurai, I.L.R. 12 Mad. 54.

Regina v. *Abdool Karim*, I.L.R. 4 Cal. 18.

He also sought to rely on the provisions of section 183 (2) of the Criminal Procedure Code.

In our view all the cases cited by Counsel for the Appellant are clearly distinguishable from the case before us. It is unnecessary to refer to the details of those cases; it is sufficient to say that in each of them it was apparent from the

facts that if any offence at all had been committed it was an offence which the Magistrate had no jurisdiction to try. In the circumstances it was held in those cases that the Magistrate had no right to split up the offence or to reduce the charge so as to enable him to deal summarily with the matter.

The position in the present case is entirely different. Here the facts clearly pointed to the commission of an offence punishable under section 363 of the Penal Code, an offence cognizable by the District Court; the accused persons were duly charged before that Court with an offence under that section; and although admittedly during the course of the trial evidence was given which might have supported a charge under section 366 of the Code, which would have been cognizable only by the Supreme Court, we are of opinion that this fact in no way affected the jurisdiction of the District Judge in proceeding to deal with the charge before him.

If the contention of the Appellant's Counsel were to be accepted, it would follow that if the record when first laid before the Public Prosecutor disclosed the possibility of an offence of a more serious nature, the Public Prosecutor would be obliged to charge the accused with the more serious offence regardless of the fact that the evidence in support of the lesser offence might be overwhelming and that that in support of the more serious offence might be doubtful and unsatisfactory. In our view this is opposed to the whole spirit of the Criminal Procedure Code, which is designed to give the Public Prosecutor or his Deputy a wide discretion in determining the actual charges to be preferred and in designating the Court before which such charges shall be tried. (See Chapter XXXIV of the Criminal Procedure Code and in particular section 390). If it were otherwise the Supreme Court would be burdened with the trial of charges upon which there was little or no hope of obtaining convictions, and accused persons would be harassed by having to stand their trial on charges which in many cases could never be substantiated.

Counsel for the Appellant further contended that in view of the evidence which had been given, the District Judge was, under the terms of section 183 (2) of the Criminal Procedure Code, no longer competent to try the case and that he was therefore bound to stay proceedings as required by that section. In our view this contention also fails. Section 183 (2) of the Criminal Procedure Code deals with two alternative sets of circumstances, namely:—

(1) Where the District Court has no jurisdiction to try the charge upon which an accused person has been brought before it;

(2) Where the case is one which in the opinion of the District Court ought to be tried by the Supreme Court.

In either of these sets of circumstances the District Court is required to stay proceedings and to order the accused to be brought before a Police Court with a view to committal for trial. The first set of circumstances mentioned above has no application in the present case, as clearly the District Court had jurisdiction to deal with the charge upon which the accused had been brought before it. As regards the second set of circumstances, the District Judge, who, obviously from his Judgment, had the provisions of section 183 before his mind, exercised his discretion and considered that the case was not one which need be committed to the Supreme Court. In these circumstances the District Judge was in our opinion entitled to dispose of the case summarily.

In connection with this point reference may usefully be made to the Indian case *Rex* v. *Ayyan and another*, I.L.R. 24 Mad. 675. In that case the accused were tried and convicted by a Deputy Magistrate on a charge under section 193 of the Penal Code. On appeal to the Court of Session it was held that as the facts indicated an offence under section 194 of the Code the Magistrate had no jurisdiction to try the appellants for an offence punishable under section 193. In the High Court the order of the Sessions Court was set aside and the order of the Magistrate restored. The following is an except from the Judgment of the High Court:—

> "In the present case the Deputy Magistrate did not try the accused for an offence beyond his jurisdiction. He tried him for an offence punishable under section 193, Indian Penal Code, i.e, for an offence triable by a first-class Magistrate and therefore within his jurisdiction. His proceedings therefore were not void and the Sessions Judge was wrong in treating them as void. Where the facts disclose an offence within the jurisdiction of the Magistrate it seems to us a complete fallacy to say he is not empowered by law to try the person charged for the offence which is within his jurisdiction because the same facts disclose a more serious offence which is beyond his jurisdiction. He is expressly so empowered. Whether in so doing he adopts a proper course is another question. No doubt it is improper on the part of a Magistrate to intentionally ignore circumstances of aggravation which show that an offence beyond his jurisdiction was in fact committed as well as an offence whithin his jurisdiction, as, for instance, if a Second-class Magistrate should ignore the violence used in committing theft and should deal with the

case himself as one of theft (section 379), instead of sending the accused before a First-class Magistrate to be tried for robbery (section 392). Here the action of the Second-class Magistrate would be improper but his proceedings would not be void. If the improper action of the Second-class Magistrate had led to a failure of justice as, for instance, by causing the punishment to be inadequate, it would be open to the proper authorities to apply a remedy by instituting a second prosecution on the same facts for the more aggravated offence (section 403, Criminal Procedure Code). It would also, in our opinion, be open to the revising and appellate authorities to set aside the Magistrate's proceedings and order a fresh trial, if such a course was required in the interests of justice but not otherwise; and the reason for setting them aside would be, not that they were void *ab initio* but because they were improper and the interests of justice required them to be set aside."

We accept this as a correct statement of the law, and in the present case we see no sufficient reason for thinking that the learned District Judge exercised improperly the discretion conferred upon him by section 183 (2) of the Criminal Procedure Code or that the interests of justice require that the proceedings before the District Court should be set aside.

The remaining grounds of appeal may be briefly disposed of.

As regards the second ground of appeal, it is sufficient to say that the findings of the learned District Judge as to wrongful confinement and kidnapping are amply supported by the evidence.

As regards the third ground of appeal, we are of opinion that, on the facts as proved, the arraignment of the Appellant on the two charges brought against him, and his trial with the two other accused persons, was fully justified under the provisions of sections 171 and 175, respectively, of the Criminal Procedure Code.

As to the fifth ground of appeal, wo do not consider that the sentences imposed upon the Appellant were in all the circumstances excessive.

Appeal dismissed.

Solicitor for the Appellant—*A. de Mello.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

November 27, 1934.

RE CHOP GUAN SENG.

[SINGAPORE BANKRUPTCY No. 374 of 1922]

Duties of Official Assignee—Ordinance No. 44 (Bankruptcy) S. 40 (3); S. 64 (2) Bankruptcy Rule 197 (1).

A Chinese Chop offered a composition of 20 cents in the dollar to its creditors. The proposal for composition was accepted by all the creditors but one, who had previously refused to sign a document purporting to be an agreement for composition. This document was unregistered. The dissenting creditor presented a petition in bankruptcy upon which a Receiving Order was made against the firm. Subsequently the individual partners of the firm were adjudged bankrupt. No notice of application to adjudge them bankrupt was given to any of them. The only proof filed was that of the petitioning creditor's debt. One of the partners in the bankrupt firm who at the time knew nothing about such proceedings subsequently learnt of the Order of Adjudication passed against him and he thereupon notified the Official Assignee of his intention to satisfy the debt in this bankruptcy. Having regard to the composition paid to the creditors before the firm's bankruptcy, the Official Assignee was in doubt what proper steps he should take in the events that had happened. He applied to the Court for directions.

Held, that the Official Assignee was under no duty to recover from the creditors the amount paid to them as composition before bankruptcy supervened.

Held further, that in the event of a dividend being declared a notice to the creditors individually under Bankruptcy Rule No. 191 (1) was unnecessary.

Obiter, the creditors could still prove if they so desired, but they might have to repay the amount that they had received by way of a fraudulent preference.

Motion for directions by the Official Assignee.

The facts are sufficiently stated in the Judgment.

E. B. Williams, Official Assignee, Applicant on the Motion.

Paulusz, for Quek Chia Yak the partner in the bankrupt Firm.

Cur. Adv. Vult.

TERRELL, J.—On the 1st September, 1922, a Receiving Order was made against Chop Guan Seng. It appeared that there were originally 88 creditors, but 87 of them had before the date of the Receiving Order accepted a composition of 20 per cent. and signed a Chinese document which, however, provided that in the event of any of the creditors refusing to sign the document, it should be considered null and void. The petitioning creditor in fact refused to sign it. obtained a Receiving Order against the Chop and proved for $800.00. The composition was never registered in accordance with the provisions of section 20 of Ordinance No. 44 (Bankruptcy) and is therefore invalid. None of the 87 creditors however proved.

On the 23rd November, 1923, the eight partners, including one Kwek Chia Yiak, were adjudicatd bankrupt. No effort was made to serve Kwek Chia Yiak with notice of the application and he in fact had no idea that he had been so adjudicated until quite recently. He only had a small share of $500.00 which he was content to lose. He was away in China when the Chop failed and has for some years been carrying on business in Malacca, blissfully ignorant of the implications involved by his adjudication in 1923.

As regards the want of notice to Kwek Chia Chia Yiak, although as a matter of practice such